THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.12143 OF 2005

ORDER:

This Writ Petition is filed seeking a declaration that the order of the 1st respondent-Government of Andhra Pradesh, in G.O.Ms.No.95 Transport Roads & Building (TR.I) Department, dated 11.05.2005, as illegal and arbitrary, and consequently, to restore the State Transport Authority (for short the "STA"), constituted under G.O.Ms.No.21, TR&B (Tr.II) Department dated 13.11.2003.

The Writ Petitioner was appointed as a non-official member of the STA, constituted under G.O.Ms.No.201 dated 13.11.2003, for a period of three years with effect from 13.11.2003. It is not in dispute that the said order was passed in exercise of the power conferred under Section 68(1) of the Motor Vehicles Act, 1988, read with Rule 131 of the A.P. Motor Vehicle Rules, 1989 (for short "the Rules"). As per the said order, the term of the STA would expire on 12.11.2006. However, the 1st respondent-Government, issued the impugned G.O.Ms.No.95, dated 11.05.2005 reconstituting a fresh STA for a period of two years, under which the respondents 2 to 6 herein, were appointed as Chairman and Members. The said order dated 11.5.2005 is under challenge in this Writ Petition, contending *inter alia*, that the 1st respondent is not justified in reconstituting the STA, even before the expiry of the period fixed under G.O.Ms.No.201, dated 13.11.2003. It is contended that the entire action of the 1st respondent is arbitrary, illegal and contrary to the statutory provisions.

The 1st respondent filed a counter-affidavit stating that the period of appointment shown as three years under G.O.Ms.No.201 dated 13.11.2003, is beyond the period of two years specified under Rule 131 of the Rules. Hence, the STA which was illegally constituted cannot be continued, and, therefore, in exercise of the power conferred under Rule 131(2) for removal of any Member of the STA, the impugned order has been passed reconstituting the STA, to set right certain mistakes crept in while constituting the earlier STA under G.O.Ms.No.201, dated 13.11.2003.

I have heard the learned counsel for the petitioner, the learned Government Pleader appearing for the respondents and perused the material on record.

Under Section 68 of the Motor Vehicles Act, 1988 (for short "the Act"), the State Government is vested with the power to constitute the STA by notification in the Official Gazette to exercise and discharge the powers and functions specified in sub-section (3) of Section 68 of the Act. As per sub-section (2) of Section 68 of the Act, the STA shall consists of Chairman having judicial experience and such other persons, not being more than 4, as the State Government may think fit to appoint.

In exercise of the Rule Making power conferred under the Act, the A.P. Motor Vehicles Rules, 1989 were made under G.O.Ms.No.216 dated 7.08.1989. Rule 131 of the said Rules provides for appointment of the Regional and State Transport Authorities. Rule 131 of the Rules, to the extent it is relevant runs as under:

> "131. **Appointment of Regional and State Transport Authorities**:-
>
> (1) The period of appointment of the Regional Transport Authority or the State Transport Authority constituted under sub-section (1) of Section 68 of the Act shall be two years with effect from and from the date on which its constitution is notified in Andhra Pradesh Gazette or until the fresh Regional Transport Authority or State Transport Authority is constituted whichever is later:
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> Provided that the Government may by notification and for reasons to be recorded thereon at any time before the expiry of the original period of appointment reduce the said period of appointment of the Regional Transport Authority or the State Transport Authority for such period as they deem fit. (emphasis supplied).
>
> (2) ……..."

A reading of sub-rule (1) of Rule 131 makes it clear that the period of appointment of the STA shall be two years or until a fresh STA is constituted whichever is later. Having regard to the specific language of the above provision, it is clear that the term of the STA is protected for a minimum period of two years. However, the proviso, which is an exception to Rule 131(1), enables the Government to reduce the period of appointment of STA for such period as they deem fit, by notification to that effect. Further, while reducing the period of appointment of the STA, the Government has to record reasons, which shows that the said power cannot be exercised as a matter of course.

In the case on hand, it is clear that since the STA was constituted under G.O.Ms.No.201 with effect from 13.11.2003 for a period of three years, and the term would expire only by 12.11.2006. It is true that under sub-rule (1) of Rule 131 of the Rules the period prescribed is two years, however, even after expiry of the said two years, the STA can continue until a fresh STA is constituted. Of course, as expressed above, in exercise of the powers conferred under the proviso to Rule 131 (1), it is open to the Government to reduce the period of appointment by notification and for the reasons to be recorded in writing even before the expiry of the original period of appointment. However, under the impugned order since a new Committee has been constituted, undoubtedly the same cannot be brought within the purview of the proviso to Rule 131(1) of the Rules.

Then the question that remains for consideration is whether a fresh STA can be constituted even before the expiry of the two years term prescribed under Rule 131(1) of the Rules.

Though the learned Government Pleader vehemently contended that it is always open to the Government to constitute a fresh STA, even before the expiry of the two years, having regard to the language employed in Rule 131(1) of the Rules, I am unable to agree with the said submission. It is to be noted that sub-rule (1) of Rule 131 in clear terms provides that the term of STA shall be two years or until a fresh STA is constituted whichever is later. In the circumstances, undoubtedly the term of the STA is protected for a minimum period of two years, subject to reduction of the original period of appointment in exercise of the powers conferred under the proviso to Rule 131(1) of the Rules.

It is relevant to note that even in terms of Rule 131 (1), under which the term of STA was mentioned as two years, the petitioner who was appointed under G.O.Ms.No.201 dated 13.11.2003, is entitled to continue up to 12.11.2005. However, under the impugned G.O.Ms.No.95, dated 11.05.2005, a fresh STA was constituted even before the expiry of the said two years. As expressed above, since under sub-rule (1) of Rule 131, a minimum period of two years is protected, and since G.O.Ms.No.95, under no circumstances, can be treated as a notification reducing the term of the original STA constituted under G.O.Ms.No.201 dated 13.11.2003, I am of the opinion that the impugned G.O.Ms.No.95 is *ex facie* illegal being in contravention of sub-rule (1) of Rule 131. The said order cannot even be brought

under the purview of sub-rule (2) of Rule 131, which provides for removal of any Member of the STA. On the face of it, under the order impugned a fresh STA has been constituted, but it is not for removal of any Member of the STA constituted under G.O.Ms.No.201 dated 13.11.2003, as sought to be contended by the respondents.

For the aforesaid reasons, I am of the opinion that the impugned G.O.Ms.No.95 dated 11.5.2005, which is in contravention of the provisions of Rule 131 (1) of the Rules, is arbitrary and illegal, and the same is accordingly set aside.

However, the learned counsel for the petitioner contends that since under the G.O.Ms.No.201 dated 13.11.2003, STA has been constituted for a period of three years, unless the period of appointment is reduced by notification, for reasons to be recorded, the petitioner is entitled to continue till the expiry of the period of three years. The said submission of the learned counsel runs contrary to the language of Rule 131(1) of the Rules, under which the term of STA is protected for a minimum period of two years subject to reduction of term under the proviso. After the expiry of two years it is always open to the 1st respondent to constitute a fresh Committee in which event the term of STA beyond two years automatically expires. Hence, the mere fact that under G.O.Ms.No.201 dated 13.11.2003 the term was mentioned as three years is of no consequence and does not confer any right on the petitioner to continue till the expiry of three years.

In the circumstances, it is made clear that the STA constituted under G.O.Ms.No.201 dated 13.11.2003 is entitled to continue till a fresh STA is constituted.

Accordingly the Writ Petition is allowed. No costs. However, it is left open to the respondents to take appropriate steps to constitute a fresh STA in accordance with law.

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(G. ROHINI, J.)

22nd December, 2005.

Kgr

Issue CC in three days.

L.R. Copy to be marked.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.12143 OF 2005

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22nd December, 2005.

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Between:

D. Sankar Naidu. .. Petitioner.

The Government of Andhra Pradesh,
represented by special Chief Secretary
To Government, Transport, Roads and
Buildings (TR.I) Department, Secretariat,
Hyderabad and five others. .. Respondents.

***THE HONOURABLE Ms. JUSTICE G. ROHINI**

+W.P. No.12143 OF 20051987

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% 22-12-2005

D. Sankar Naidu. .. Petitioner.

Vs.

$The Government of Andhra Pradesh,

represented by special Chief Secretary

To Government, Transport, Roads and

Buildings (TR.I) Department, Secretariat,

Hyderabad and five others. .. Respondents.

! Counsel for the Appellants: Sri Noushad Ali

^ Counsel for the Respondent: G.P. for Transport

Mr. R. Ramachandra Reddy

< Gist:

>Head Note

? Citations:

1. **2000(6) ALT 26 (SC)**
2. **2000(5) SUPREME 396**
3. **AIR 1975 ANDHRA PRADESH 350.**
4. **2000(5) ALD 764**
5. **AIR 1940 LAHORE 159**
6. **AIR 1959 CALCUTTA 302**
7. **AIR 1921 MADRAS 172**
8. **AIR 1958 ASSAM 67**
9. **AIR 1959 PATNA 331**
10. **AIR 1959 PANJAB 252**
11. **1970(2) APLJ 104 (SNRC)**
12. **AIR 1971 SUPREME COURT 1238**
13. **AIR (37) 1950 PRIVYCOUNCIL 90**
14. **AIR 1995 SUPREME COURT 1607**

15. **(2001) 8 SUPREME COURT CASES 173**